

Criminal Justice Civil Society Program

March 2013 – August 2014

Implemented by East West Management Institute and World ORT Inc.



Funded by the U.S. Embassy Podgorica, Bureau of International
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Thematic Summary of Sub-Grantee Projects

The Criminal Justice Civil Society Program (hereinafter referred to as: “CJCSP”) is a program launched to increase citizens' engagement in criminal justice reform efforts. The goal of the CJCSP is to help Montenegro face key challenges in its progress to NATO and EU membership by transitioning to a more effective and transparent criminal justice system as envisaged under Chapters 23 and 24 of the Acquis Communautaire. Implementation of this Program has contributed to a great extent to the increase of civil society engagement in criminal justice reform efforts through watchdog and monitoring activities, advocacy and policy-making. Activities implemented under the projects supported by CJCSP have particularly contributed towards greater transparency in judicial institutions and access to justice, increased dialogue between civil society organizations (CSO) and justice institutions, as well as increased public confidence in the justice system. In addition, a portion of the activities were aimed at further strengthening the accountability of the executive authority.

Financial and technical assistance was secured through the CJCSP to selected CSOs that conducted activities at the national, regional and local level. In this way, the program contributed to the strengthening of capacities of CSOs and gave impetus to their active involvement in the process of overseeing the implementation of public policies in Montenegro, through monitoring and advocacy, and contributed to further development of public policies in the area of criminal justice. CJCSP is realized through a medium and small-sized grants program to support civil society groups in all regions of Montenegro. Program activities to pursue criminal justice reform are realized in the following three categories: 1) advocacy and policy development; 2) public education; and 3) watchdog activities. Supported projects have fully responded to the basic mission of the program – to improve public awareness of the advantages and disadvantages of the past reform of the criminal justice system by giving specific proposals for further reforms and strengthening the capacity of judicial institutions.

Project activities have resulted in numerous policy analyses in the area of criminal justice with a special focus on the implementation of measures and commitments assumed by Montenegro in the process of negotiations with the European Union, in Chapters 23 and 24. This is especially related to projects that are aimed at analyzing human rights in the legal system of Montenegro, analyzing system performance in the reform of the criminal justice system, determining the degree of realization of the principles of transparency, accountability and public confidence in the judiciary, analyzing the institutional framework

in the fight against corruption, as well as projects related to the improvement of the legal and institutional framework regarding the application of EU principles from the above-mentioned negotiation chapters.

The report before you presents a thematic summary of program activities implemented within the CJCSP framework. In addition to the findings, also presented are the most important recommendations directed to the institutions of the executive, judicial and legislative branches, related to the improvement of the current situation through changes in the legal and institutional framework, whose implementation will greatly contribute to the achievement of a number of measures from the Action Plans for Chapter 23 and 24 during negotiations between Montenegro and the EU. Findings and recommendations are grouped into seven sections according to topic areas that are particularly important in terms of Montenegro's European integration process, and that: transparency and access to information in the possession of judicial institutions; domestic violence; custody; communication between judicial institutions and citizens; the effectiveness of appellate procedures in the criminal justice system; drugs; development of the institutional framework of the criminal justice system; plea agreement and deferred prosecution. It should be noted that the findings and recommendations of individual projects can be found in several analyzed thematic areas because the range of organized activities and the results achieved in these projects are linked to a number of very different segments in the area of criminal justice.

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NOTE: The findings and conclusions in this publication do not necessarily represent the views of the United States Embassy in Podgorica, Bureau of International Narcotics and Law Enforcement Affairs (INL).

1. TRANSPARENCY AND ACCESS TO INFORMATION

Strengthening accessibility, transparency and public confidence in the judiciary is one of the main strategic objectives of the reform of the judicial system in Montenegro in the next five years (2014-2018). Transparency of the work of judicial institutions is one of the most important principles underlying an effective justice system – the principle which largely affects the degree of public confidence in the judiciary. In the previous period of validity of the Judicial Reform Strategy 2007-2012, significant progress has been made when it comes to the implementation of the principle of transparency in the work of judicial institutions, primarily courts. However, there is still significant room for improving the implementation of the principle of transparency by all judicial institutions, with the proviso that in the future, special emphasis will be placed on improving the transparency of prosecutors' offices.

The Project "Initiative for Transparency of Criminal Justice System in Montenegro" realized by the Center for Democratic Transition (CDT) was designed to boost cooperation and constructive dialogue with criminal justice system institutions and contribute to more transparent judicial proceedings, improvement of access to justice and quality of judicial proceedings, as well as increasing public confidence in the judicial system. Throughout the project, CDT analyzed the availability of information and the transparency of internal processes and administrations of courts, prosecutors' offices, and the police, and implemented monitoring activities aimed at assessing the transparency of their work. CDT established the web portal www.otvorenopravosudje.cdtmn.org, where information on the transparency of all judicial institutions can be found. Based on the analysis of key deficiencies, recommendations for improvement have been created, in line with international standards and best practices. The implementation of the activities of this project also contributed in improving the professional capacities of actors of the criminal justice system.

Civic Alliance (CA) and Center for Democracy and Human Rights (CEDEM) in the implementation of their project titled "Situation in the area of criminal justice in Montenegro" dedicated a special segment of their activities to the transparency in the work of courts through a targeted search of final judgments through the use of the Law on Free Access to Information. Transparency was also monitored through the analysis of the Court information system and their portal www.sudovi.me. Research has shown that some courts (Appellate Court and the High Court in Podgorica) obey the Law on Free Access to Information and timely respond to requests for free access to data, while some courts (High Court in Bijelo Polje) did not give a positive response to the request in violation of the Law on Free Access to Information (as determined by the second instance body – Agency for the Protection of Personal Data and the Free Access to Information). The information system

and transparency through monitoring portal sudovi.me shows that the promptness of posting the final judgments is at a low level, especially in some courts in the north of Montenegro (e.g. Higher Court in Bijelo Polje). Also, research has shown that, in the beginning, it was very difficult to get the integral text of the final judgment if all the elements of a thorough search were not known. Earlier this year, some of these defects have been eliminated and it is now much easier to acquire judgments if you possess the judgment number.

Center for Civic Education (CCE) realized the project titled “Through inspection against corruption” with the aim of helping increase public confidence in the criminal justice sector through the implementation of effective monitoring activities on the reaction of the executive authority to findings, reports and indications of illegal actions and corruption. Project activities were specifically focused on monitoring the activities and strengthening of capacities of the Administration for Inspection Affairs as an executive power, which, through its inspection units, as the first and the closest instrument available to citizens, ensures a widely set system to combat corruption and illicit behavior in Montenegrin society. Analysis of the work of the Administration for Inspection Affairs is carried out on the basis of official reports produced by the Administration itself, as well as other numerous laws, regulations, government reports, strategies, and action plan for Chapter 23 (Judiciary and Fundamental Rights), Report no. 1 on the realization of Action Plan for Chapter 23 (Judiciary and Fundamental Rights), as well as the European Commission Report on Montenegro's progress in 2013. During the lifespan of this project, Center for Civic Education also followed the media coverage on the work of the Administration for Inspection Affairs, and conducted three focus groups with a total of 19 inspectors who were able to evaluate the effectiveness of this model, the challenges they face in practice, as well as to give recommendations for the improvement of their position and the overall position of the Administration for Inspection Affairs to achieve the needed efficiency and effectiveness in work. In the period March - May 2014, CCE organized six street actions in Podgorica, during which their activists encouraged citizens to report corruption and other illegal activities that fall under the jurisdiction of the Administration for Inspection Affairs.

Under the scope of CJCSP, ND "Vijesti" implemented the project titled “Analysis of the application of plea agreements and deferred prosecution.” During the research, ND "Vijesti" faced a problem; the Supreme State Prosecutor's Office refused them access for nine months to documents of deferred prosecutions, although these were concluded cases. In their investigative articles, ND Vijesti stated that the Prosecutor's Office denied the request of ND Vijesti under the Law on Free Access to Information to have insight on cases concluded with deferred prosecution, which would give answers to the following questions: how many deals the Offices of Prosecutors reached with the suspects and who

were these individuals; how much money was raised on that basis; whom the money was paid to and how were those institutions selected?

MogUL Coalition through CJCSP implemented the project titled “Loudly against corruption” with the aim of promoting the fight against corruption through monitoring the work of institutions at the local level in the municipality of Ulcinj. The research and activities conducted have not received a positive response from institutions and public enterprises in the municipality of Ulcinj. An intensive public awareness campaign was carried out through the collection of information and processing of cases; through participation in public debates on the adoption of certain laws and by organizing TV shows on local television on the problems of managing coastal resources. Also, they have been monitoring the activities of selected trials before the Court in Ulcinj, during which MogUL spotted the existence of phenomena that jeopardize the principles of independence and impartiality of the court, equality of parties involved and the trial being public.

Five major recommendations:

1. It is necessary to strengthen the transparency of the judicial institutions through the disclosure of information relevant to their operations (contact information, guides on access to information, bulletin boards, etc.). Courts transparency should be further strengthened by the regular publication of all decisions on the court portal. Although the recently established portal allows general access to the case law, the search options on the website are complicated and do not allow access to all documents. Earlier this year, some shortcomings in the work of the portal were removed and it is now much easier to reach judgments if you possess the judgment number;
2. It is necessary to improve communication of the public prosecutor's offices with citizens and the media, given that prosecution offices do not have public relations officers making it therefore significantly more difficult for citizens and media to obtain information. The Supreme State Prosecutor's Office should ensure greater transparency in the work through regular press conferences, updates of important decisions and information through the web-site, as well as to ensure the timely handling of requests for access to information as foreseen by law;
3. It is necessary to improve budgetary transparency of the courts and prosecutors' offices in a way that the budgets of these institutions should be published on their websites in a format that will allow for easy reading of information on the implementation of the budget;
4. Transparency of the work of the Administration for Inspection Affairs must include easily accessible regulations, procedures, submission of applications, educational materials, answers to frequently asked questions, the assessment of risk in certain

high-risk areas and supervised entities, detailed information on filed criminal charges with respect to the presumption of innocence;

5. It is necessary to ensure full transparency and public access to decisions of courts and prosecutors' offices that are made on the basis of plea agreements and deferred prosecutions.

2. DOMESTIC VIOLENCE

In accordance with accepted international standards, Montenegro is responsible for the suppression, investigation and prosecution of all forms of human rights violations, including domestic violence and violence against women. Unfortunately, domestic violence is now a widespread human rights violation in Montenegro. According to the results of recent research, up to 92% of interviewed citizens of Montenegro considered that there is domestic violence. This is also corroborated by data from official reports of the state institutions which state that in 2013 alone there were 1350 victims of domestic violence. Therefore, it is necessary that in the near future the government intensifies efforts in combating domestic violence and ensures the implementation of the adopted laws and policies, which, as shown by implemented monitoring activities, is still at a low level.

Women's Rights Center (WRC) implemented a project under the CJCSP titled "Joint NGO monitoring of the application of family violence laws" aimed to facilitate joint expert NGO action of monitoring, reporting and providing recommendations to improve the protection against domestic violence in Montenegro, both in terms of implementation assessment and in relation to future policy improvement and legislation. Through the activities of the project, direct assistance has been provided to victims of domestic violence through the provision of primary and secondary legal assistance. A partnership was established and the capacities of three women non-governmental organizations dealing with violence against women were improved. Also, comprehensive research on domestic violence was conducted, through the monitoring of criminal proceedings and interviews with victims and representatives of relevant institutions. The research resulted in the creation of three case studies on violence against women, as well as a report on domestic violence, which includes an analysis of the application of the law in the area of violence against women and domestic violence and relevant recommendations for policy improvements. Recommendations from this project should provide guidance and facilitate the efforts of the state in identifying problems in the way institutions deal with these issues, problems with victims' access to justice, and in the adequate prosecution and sanctioning of domestic violence and violence against women.

Women's Alliance for Development (WAD), in cooperation with several NGOs from northern Montenegro, implemented the project titled "Advocacy for improving legal and institutional response to domestic violence," through which they monitored the application of the legal framework in the field of domestic violence in the northern municipalities of Montenegro and strengthened the capacities of "women" organizations and coalitions working on this topic. One of the general conclusions of the research is that measures for the protection of victims already available should be implemented more effectively. Also, it was concluded that the sentencing policy for a number of offenses related to domestic and

sexual violence is “too lenient.” The legal delineation between felony domestic violence and misdemeanor domestic violence* is not clear in practice and as a consequence the largest number of complaints is directed to the magistrate.

*Misdemeanor domestic violence is a lesser offense than felony domestic violence.

Five major recommendations:

1. It is necessary in all institutions (police, prosecution, courts, social welfare centers, health care and educational institutions) to provide specialized professionalized units/personnel for domestic violence and to organize a special training program for them. It would be preferable to establish special courts for domestic violence and violence against women;
2. It is necessary to create the legal assumptions for exercising the right to free legal assistance to victims of domestic violence also in misdemeanor proceedings (through amendments to the Law on Free Legal Aid);
3. In the cases of domestic violence, institutions of deferred prosecution, plea agreements, and mediation (conciliation) in a divorce case, should not be used, because, even though they are useful remedies that can have a positive impact on saving resources of the judicial institutions, their use in complex and socially sensitive cases, such as cases of domestic violence, may signal a reduced significance and consequence of these crimes and discourage the victim;
4. It is necessary that the police and prosecutors take into account circumstances that indicate the continuity and repetition of violence and its consequences for the victim and other family members. In addition, it is necessary to investigate allegations of violence against children, especially sexual abuse, and those facts, along with the appropriate qualification of the offense, be specified in the indictment and require protective measures for the victim, especially for children.
5. The National Police Directorate should record all reports of domestic violence and deliver that information to the prosecutor's office. With every new charge, it is necessary to inform the prosecutor about earlier complaints, penalties, imposed protective measures and other details relevant to the qualification of the “act.”

3. CUSTODY

In the legal system of Montenegro detention is an exceptional measure that is ordered only when it is necessary for the unobstructed conduct of the criminal proceedings and if the same purpose cannot be achieved with other measures. Competent state bodies participating in criminal proceedings are obliged to act with particular urgency and decide in cases where custody is determined. Legal norms prescribe the basis and conditions under which detention can be ordered. CJCSP funded two projects which approach the topic of detention from different angles.

Human Rights Action (HRA) implemented the project titled "Improvement of ordering pre-trial detention" with the objective to determine the frequency of detention and compliance with international standards in restrictions and detention of a person in criminal proceedings. The project included a comprehensive research in which, by the method of direct access to the case files, a total of 297 cases were analyzed in all courts in Montenegro. The research of HRA has shown progress in some areas, especially when it comes to statement of reasons for ordering detention, while some aspects of detention, such as the application of alternative measures – release on bail and surveillance measures, remain problematic and require further, continued work of judicial institutions to improve their application. Detention is the rule in practice in higher courts, while basic courts order it in a very small number of cases. Detention is still most frequently ordered on the basis of the risk of flight. This practice could change if the courts applied surveillance measures or bail as measures that would effectively replace detention and ensure the presence of the accused in criminal proceedings. Prosecutors, as a rule, base proposals for detention on stereotypical explanations without sufficiently compelling reasons to justify the grounds for detention. Courts adhere to the provisions of the Constitution and the CPC on the duration of detention in all stages of criminal proceedings, assuring that the duration of detention is reduced to the shortest duration possible. Although in the past year and a half, the number of releases on bail increased, it can be said that this institute is still not used enough, nor are surveillance measures. In practice, the system of electronic monitoring to obey bans and restrictions that are specific to the defendant has not yet become a reality.

The European Law Students' Association (ELSA) implemented the project titled "Monitoring of pre-trial detention system in Montenegro." By visiting detention facilities, the project aimed to assess the technical conditions in detention premises, their compliance with national legislation and international standards, as well as their conditions with respect to human rights of prisoners and detainees in detention premises. The visits included the following: an insight in a number of detention facilities; the assessment of optimal conditions with respect to space, bedding, linen and other amenities as per international standards; lighting in rooms with special reference to the existence of

natural light; heating and cooling; compliance with hygiene conditions in premises; the availability of drinking water; the ability to communicate with facility officials; the existence of video surveillance; testing of sanitary facilities; as well as the existence of objects which can be used for self-injuring or harassment. Monitoring activities were carried out in fourteen municipalities in Montenegro.

Five major recommendations:

1. Considering the current implementation of detention, Article 175, Paragraph 1, Item 4 of the CPC (when custody is determined due to particularly difficult circumstances of the case and the need to preserve public order), it is necessary when amending the CPC next time to specify grounds for detention, because this is now being used as basis for “mandatory detention”, which is contrary to international standards;
2. It is essential that the Court of Appeal elaborate its decisions in the proceedings on appeal in the rulings on detention orders, and not to base them only on the arguments of lower instance courts, but rather provide comprehensive and convincing arguments in support of its reasoning, referring to international standards and the European Court of Human Rights;
3. In order to provide incentives for state prosecutors to make their submissions in accordance with European standards, it was suggested that the percentage of adoption of their proposals for detention be taken into account when assessing the quality of their work;
4. A more frequent use of alternative measures is recommended for assuring the presence of the accused in the process – bail and monitoring measures;
5. Despite the apparent efforts to make detention facilities better and more suitable for detainees, infrastructure capacities are far below international standards and it is necessary to build new facilities that will meet the requirements concerning square footage, lighting, water availability, food, ventilation, heating, toilets and video surveillance.

4. COMMUNICATION BETWEEN JUDICIAL INSTITUTIONS AND CITIZENS

The degree of citizens' confidence in the work of judicial institutions depends largely on the willingness of the judicial institutions to develop channels of regular communication with them. It is the citizens that expect the judicial institutions to ensure a simple and effective communication with the administration of justice, without excessive bureaucratic obstacles that sometimes can limit or even prevent them from getting information. Therefore, in the framework of CJCSP, a special attention is given to the communication between judicial institutions and citizens at national and local level. An overview was given through realized project activities on the openness of judicial institutions, transparency of their work and possibilities available to citizens in terms of obtaining the desired information which can be related to the work of institutions (names and biographies of judges, contact information, list of scheduled trials, annual work schedule, work reports, etc.) or the realization of their right to access the full text of all final decisions.

Institute Alternativa within its research project "Strengthening inter-institutional cooperation in the criminal justice system of Montenegro," dedicated a special component to the analysis of reports on the work of the police and the State Prosecutor's Office. Reports of the institutions' work are recognized as an instrument of control over the work of the institutions through which citizens and the general public can evaluate the effects of their work. Work reports must be timely, accurate, and correct, and their content should answer the questions: what are the results achieved during the reporting period and what are the problems and obstacles in the work. The research resulted in the publication of a comprehensive research report, which emphasizes the importance of adequate reporting on the work of the police and the State Prosecutor's Office, particularly in light of the opening of negotiations with the European Union on Chapter 23 - Judiciary and fundamental rights - and the need for monitoring progress in achieving the set goals. The subject of analysis of the research report are reports on the State Prosecutor's Office work and parts of reports of the Ministry of Interior regarding the work of the Police in the context of international standards of openness and transparency. Both statistical and narrative data available in these reports were analyzed, in relation with the competence, work and activities of these bodies. Monitored was also the extent to which the content of these reports inform citizens and the Parliament, which has a supervisory role over these institutions, on the achieved results, especially in the fight against corruption and organized crime. The research report resulted in a set of recommendations to the subject institutions whose implementation will lead to continuous improvement of accountability and transparency and their greater efficiency.

As previously mentioned, the Center for Democratic Transition (CDT) realized the project "Initiative for Transparency of Criminal Justice System in Montenegro" aimed at fostering cooperation and constructive dialogue with the institutions of the criminal justice system and contributing to transparent judicial proceedings, improved access to justice and quality of judicial proceedings, as well as increased public confidence in the judicial system. The project analyzed the availability of information and transparency of internal processes and administration in courts, office of prosecutors and police. Monitoring activities have also focused on the transparency in the work of courts, prosecutors and police. After completing the monitoring activities, based on the analysis of key deficiencies, recommendations for improvement have been created, in line with international standards and best practices.

The project "Citizens in judiciary reform" was realized by the Center for Political Education (CPE) from Niksic. One of the main goals of this project was to improve communication and cooperation between judicial institutions and citizens at the local level. The project included a research on how much are the people of Nikšić satisfied with the work of judicial authorities. Research has shown that, despite the average scores, citizens have not completely lost confidence in the judicial bodies. Research findings indicate that citizens would like to improve the current situation when it comes to the relation of the court staff and parties, and to conduct proceedings without unnecessary delays with a significantly higher degree of efficiency. Also, research has shown that citizens lack information about the work of judicial institutions, especially the possibilities given with the Law on Free Legal Aid and the Law on Free Access to Information.

Five major recommendations:

1. It is necessary to improve the Annual Work Report of the State Prosecution Office through the introduction of: detailed presentation of cases, actions taken and results achieved, especially those of particular interest to the public; analysis and presentation of operational problems, and proposed measures to overcome them; comparative graphical display of data for different categories of information in the report for a minimum of the last 5 years, and a maximum of the last 10 years, with corresponding analytical comments and explanations of trends and numbers; a review of cooperation with other state agencies; findings from reports of independent organizations, domestic and international, with proposed measures to address the identified problems; presentation of the budget with the assessment of the impact of approved funds on operating efficiency; an analysis of human resource capacities, training needs, state of the IT system, etc.;
2. It is necessary to improve the Report of the Ministry of the Interior in the section covering the work of the Police Directorate through the introduction of: an analyses

and presentation of problems in the work of the Police Directorate, and proposed measures to overcome them; reviews of reports of independent organizations, international and domestic, with proposed measures to address the identified problems; overview of situations and events by month, especially for the crime that is prosecuted ex officio, violation of public order, traffic accidents, traffic violations, fires and explosions, etc.; review of statistics in relation to detention and detainees; detailed presentation of data on applied measures of secret surveillance and other specific measures to combat corruption, organized crime and terrorism; information on cooperation with other governmental agencies; data on the structure of casualties/fatalities/injuries in the segment of "traffic safety"; demographic data display of the police force and the administration, including data on the gender, age of police officers, the number of ethnic/minority groups or other nationalities, pay grade, educational level, etc.; narrative presentation of the financial situation, and the assessment of the impact of approved budget on operating efficiency; data on the level of citizen satisfaction with police work;

3. To improve the reporting to the Parliament on the results achieved in the fight against corruption and organized crime by providing regular quarterly reports on achieved results to the Security and Defense Committee and the Anti-corruption Committee. Reports should also include data prepared by the Tripartite Committee;
4. It is necessary to further strengthen and encourage communication and cooperation between judicial institutions and citizens at the local level;
5. It is necessary to ensure continuous provision of information to citizens at the local level on the opportunities available to them through the implementation of the Law on Free Access to Information and the Law on Free Legal Aid.

5. EFFICIENCY OF THE APPEAL PROCEDURE IN THE CRIMINAL JUSTICE SYSTEM

Standardization of national case law and its harmonization with the European Court of Human Rights and the European Court of Justice was defined as one of the strategic guidelines of the Judicial Reform Strategy for period 2014 – 2018. This strategic guidance is accompanied by measures related to the provision of greater access to the judicial practice to professionals and the general public; strengthening mechanisms to monitor, analyze and access the European Court of Human Rights and the European Court of Justice and improve the capacity of judicial officials and employees of the judicial authorities in the implementation of the EU Acquis.

Civic Alliance (CA) and the Centre for Democracy and Human Rights (CEDEM) implemented the project titled “Situation in the area of criminal justice in Montenegro” with the primary objective to analyze the court practice in terms of quality of adjudication, the consistency of judicial decisions, the uniformity of case law and judicial transparency, and to identify the reasons for the large number of returned, modified or annulled judgments in the practice of courts in Montenegro. The research included the jurisprudence of higher courts in Podgorica and Bijelo Polje (21 judgments) and the Court of Appeal (14 judgments) in the period 2012 to 2014 in different areas of crime and with a heterogeneous structure of perpetrators. The practice of basic courts was also included in an indirect way, where higher courts acted based on appeals. The research resulted in a comprehensive report, which presents the analysis of the legal framework and the results obtained through field research. The report, among other things, provided: statistical data on the work of the criminal departments of Montenegrin courts in 2013; an analysis of the consistency of decisions in criminal matters as an indicator of uniformity of judicial practice; a presentation of standards of consistency in judicial decisions of the European Court of Human Rights; an analysis of the individualization of criminal justice and consistency in decision making; an analysis of the national legal framework of harmonization of court practice and control of judgments in criminal matters; an analysis of the perception of different procedural and social actors on the degree of uniformity of case law (judges, lawyers, prosecutors, academic sector, NGOs); and an analysis of case law in the appellate judgments of criminal courts – analysis of the practice of higher courts and analysis of the Appellate Court of Montenegro.

Five major recommendations:

1. The Supreme Court should take a more active role in the harmonization of judicial practice. In addition to the Supreme Court, lower instance courts should also make an active contribution to the interpretation of existing legal ambiguities and dilemmas in applying criminal substantial and procedural law. Montenegrin courts and judges, especially those who claim to know or are familiar with the way of

acquiring the practice of international courts (not only the European Court of Human Rights), must go a step further and apply the same to the specific case, which will eliminate the need for the national Supreme Court to comment on the same subject;

2. Decisions of higher instance courts annulling or modifying those of lower courts must include specific, precise and detailed explanations. In this way, the effect of control is in place - a kind of "mentoring" of the higher courts' judges over the work of lower courts' judges which may impact on reducing the recurrence of errors in making decisions;
3. Communication and dialogue between the courts of different instances should be significantly improved. Bearing in mind that a very small number of initiatives for adoption of legal opinions from the Supreme Court come from lower instance courts, it can be concluded that the formulation of the principles of interpretation of existing legal ambiguities depends predominantly on independent initiatives of the Supreme Court. This is supported by the fact that despite the lower courts judges being familiar with the practical problems in applying the law, they very rarely decide to turn to the Supreme Court with an official request for interpretation of the stated law and adopting a legal position or opinion. Therefore, it is necessary to introduce the practice of formal notice of judges of lower courts to the Supreme Court in order to obtain legal guidance, interpretations, positions and opinions that will serve as a basis for further harmonization of court practice in Montenegro;
4. The education system of (future) judges should be significantly improved. On one hand, the current model of professional development of judges which is implemented by the Judicial Training Center should be organized through a program with open sessions for discussing disputed legal issues that prevent the creation of a consistent jurisprudence, and analyzing case studies of courts and jointly reaching best legal solutions through the "learning by doing" approach. On the other hand, legal education acquired at law schools should rely more on the clinical method of learning through workshops on practical issues and case studies through which students will get familiarized with problems which they may later encounter during their professional (judge, prosecutor, and lawyer) career.
5. It is necessary to consider the establishment of special collegial bodies or expert missions (similar to models in certain developed countries and legal systems) to deal with issues of consistency of practice and efficiency of judicial institutions which would have the authority to provide comparative legal analysis and make appropriate recommendations and inputs for improvements in certain areas. Of course, these forms of action cannot be a substitute for legal and constitutional powers of certain state bodies, but can be a useful mechanism through which the knowledge and experience possessed by legal experts outside the judiciary can be used to strengthen the judicial system.

6. DRUGS

The transition process in Montenegro brought a number of problems, and certainly the most important are the increase in crime and increase in the number of drug users. The increase in the number of drug users is mostly present among youth. The increase of the number of drug users is closely associated with the increase in the number of offenses committed by this category of persons. The latest research shows that more than a half of the prison population is made of persons who have committed crimes connected with drugs. Often, these individuals at an early stage of the criminal proceeding are exposed to maltreatment, physical and mental suffering, which are often a consequence of abuse of power by police officers during the testimony or hearing process.

The Association for the Fight against Illnesses of Addictions and the Promotion of Healthy Lifestyles – Preporod, from Niksic, implemented the project “Alternative.” The idea for launching the project arose precisely from the fact that the number of crimes that carry drug users is constantly increasing, but that the “driving force” for the execution of these crimes lies in the dependence of the people on psychoactive substances. Therefore, this project aimed to analyze the connection between drug use and criminal acts committed by drug addicts and to impact through its activities on reducing the number of these crimes. Throughout the project, educational activities have been implemented – seminars/workshops for inspectors dealing with property offenses, during which participants had the opportunity to improve existing skills, share experiences on the so called “motivational interviewing” as a police technique use during interrogation and adopt appropriate proposals to continue advocating for the use of alternative sentences in the criminal justice system (which would include the rehabilitation of drug addicts – offenders, so as to impact on them preventively). During the project, Preporod recorded a growth of 20% in the number of drug users – crime offenders who contacted them either directly or on the advice of police inspectors who participated in the training program. Also, the project had a special focus on activities to raise public awareness about the addiction problem through printing and distribution of promotional materials, and the use of a questionnaire posted on the web site www.preporod.me. One of the most important results of the project is the signing of the Protocol of Cooperation between NGO Preporod and the Police Directorate with the aim of establishing a long-term and sustainable cooperation in the fight against drug addiction and its consequences. The protocol focuses on the application of the motivational interviewing technique by police officers during the interrogation of persons - drug users suspected for the execution of criminal offenses, in order to motivate the person for treatment and thereby influence the reduction of the addiction rate and connected criminal offenses.

Five major recommendations:

1. Adopt the Protocol on the application of Motivational Interviewing techniques by officers of the Police Directorate in dealing with drug addicts who have committed crimes;
2. Through the implementation of the Protocol, encourage the use of alternative measures in the treatment of drug addicts who have committed crimes, to strengthen the preventive function of police work;
3. Continue with the relevant training of police officers towards the use of alternative measures of the police in dealing with drug addicts who have committed crimes;
4. Further strengthen cooperation between the Police Directorate and representatives of the civil society sector;
5. Improve the statistics on the number of drug addicts who are repeat offenders, and the impact of the implementation of alternative measures.

7. DEVELOPMENT OF INSTITUTIONAL FRAMEWORK IN THE CRIMINAL JUSTICE SYSTEM

Development of the institutional framework is one of the key priorities for judicial reform in the future, which will include the strengthening of existing institutions and establishing new ones - which will have significant powers and responsibilities, especially when it comes to the fight against corruption and organized crime. Thus, already in 2014, if Action Plan measures for chapter 23 are to be implemented as envisaged and with the proposed terms, Montenegro will get an independent Special prosecutors' office for the fight against organized crime, corruption, terrorism and war crimes, which will be responsible for handling all cases with elements of organized crime and corruption, with special focus on high level corruption.

With the realization of their research project titled "Strengthening inter-institutional cooperation in the criminal justice system of Montenegro," Institute Alternative published a study of practice policy titled "The institutional framework for investigations of corruption and organized crime – comparative models." This study, following the indications of the need for further reform of the institutional framework for the investigation of corruption and organized crime in Montenegro, presented models of the institutional framework in five countries: Bulgaria, Lithuania, Macedonia, Romania and Serbia. The study made of two parts elaborated in details the institutional frameworks of these five countries with focus on all bodies with investigative jurisdiction in cases of corruption and organized crime, and presented recommendations of importance to Montenegro with a special emphasis on examples of good practices in the work of Special Prosecutors' Offices. The findings and recommendations presented in this study served as the basis for the Government's working group for drafting the Law which will regulate the competencies and the organizational structure of the Office of the State Prosecutor to work on cases of organized crime and corruption. A representative of Institute Alternative was part of this working group.

As part of their research project, Institute Alternative conducted research on cooperation between the prosecution and the Police at the municipality level, which resulted in a series of recommendations for improvement. The general conclusion of the analysis is that the Police and prosecutors have not yet adapted to the changes and challenges placed before them with the concept of prosecutorial investigation. The introduction of this new concept of investigations was not properly followed in terms of strengthening the administrative and spatial-technical capacities of institutions. The Prosecutor's Office, which was headed for a long time by an Acting Prosecutor, is developing rather slowly with respect to human resources, spatial-technical and organizational capacities, and therefore cannot adequately meet the obligations under laws

and objective reality. The Police, on the other hand, also have problems both related to personnel and physical and technical capacities. Through a survey conducted with focus groups of police and prosecutors in different municipalities, it was found that police officials evaluate cooperation with prosecutors as poor, while the majority of prosecutors evaluate cooperation with the police as good.

Center for Civic Education (CCE) implemented the project “Through inspection against corruption” in which they analyzed the current position of the Administration for Inspection Affairs as an institution which with its impartiality and professionalism can largely affect the fight against corruption. The research resulted in the publication of a comprehensive analysis titled “The role of inspection in the fight against corruption,” which presents: the normative and organizational basis for the regulation of the Administration for Inspection Affairs; the regional experience in the field of inspection; the analysis of the inspections as mechanisms for detecting and processing corruption; as well as a special emphasis on the role of inspections in the European integration process through the presentation of measures from the Action Plan for Chapter 23 which should be realized by the Administration for Inspection Affairs. One of the general conclusions of the analysis is that the Administration for Inspection Affairs should be an essentially independent body, without undue political or other influences, and the suspicion that there are just such influences on the work of Administration represent one of the reasons why in public it is not viewed as an impartial body. It was also noted that the Administration lacks administrative capacities, as it still does not have the right amount of inspectors as envisaged with the systematization process. The analysis presents recommendations for improving the situation and further institutional strengthening of the Administration for Inspection Affairs.

Five major recommendations:

1. In the process of the adoption of the Law on the Office of the Special Prosecutor, it is necessary to specify the relationship of the Special and Regular Prosecution’s Offices, as well as cooperation with the Police and other state authorities, while providing efficient access to the databases of other state bodies. The Special Prosecutor's Office must have quality support from professional staff, which requires determination of the required number of staff members and their qualifications, determining appropriate wages and other motivational factors;
2. The Ministry of the Interior and the Office of the Supreme State Prosecutor, in order to promote cooperation between the two institutions, should ensure continued separate and joint training activities which would involve police officers and state prosecutors, especially in combating economic crime, financial, organized crime, cybercrime, intellectual property crime and money laundering;

3. In order to advance cooperation, the Ministry of the Interior and the Office of the Supreme State Prosecutor should secure the space and technical equipment necessary for the proper implementation of the law;
4. Provide the needed conditions for work in the Administration for Inspection Affairs (sufficient number of official vehicles, required amount of fuel, modern equipment for purposes of inspection, etc.), as well as the spatial capacity for the necessary administrative and professional work, but also adjust the salaries of inspectors for the risk factor that their job brings;
5. Provide substantial and full budgetary autonomy for the Administration for Inspection Affairs, whose financial operations, after determining the funds for the work in the state budget, should be completely independent, without excluding audits by the competent authority.

8. PLEA BARGAINING AND DEFERRED PROSECUTION

Plea Bargaining and Deferred Prosecution are new concepts in the criminal justice system in Montenegro, which were introduced in the Criminal Procedure Code adopted in 2009. One of the main reasons for their introduction is the reduction of backlog of cases and duration of court proceedings.

Daily Vijesti implemented the project titled “Analysis of the application of Plea Bargaining and Deferred Prosecution Agreements” with the aim of analyzing the effects of the application of the two new institutions. One of the most significant findings of the research is that the majority of criminal cases in Montenegro are still being processed with lengthy court procedures, because plea bargaining is very rarely used by prosecutors and defense lawyers. In accordance with the findings of the research, in the period from 2010 to mid-2013, a negligible number of final judgments were pronounced on the basis of plea agreements. Although pleas can be used in all offenses for which the law foresees up to 10 years in prison, they were used only on smaller criminal offenses. Thus, it was observed that courts reached verdicts based on plea agreements mainly for the following crimes: falsifying documents, lower scale smuggling, serious bodily injury, use and selling of narcotics, building without permit, misuse of business operations, smaller scale illegal trade, illegal possession of firearms, endangering security and domestic violence. Heads of judicial institutions that were Vijesti’s interlocutors and participants in the study stated that the plea bargaining is a common law institute and that our legal system is based on civil law, which conditions the existence of plea bargaining in our area and with that also its low application. Also, the lack of application should be sought in the fact that State Prosecutors in Montenegro are reluctant to negotiate plea agreements in order to avoid wrongful conclusions of the general public about the alleged abuse of authority in the application of this institute.

Deferred prosecution came to life with the new CPC in 2009, which stipulates that it can be used only for crimes punishable with either fines or up to five years in prison, and when the prosecutor determines that it would not be efficient or practical to conduct criminal proceedings, which is assessed based on the nature of the offense, circumstances, offenders history and characteristics. ND Vijesti did not have an insight into cases of deferred prosecution.

Five major recommendations:

1. Enable publication of concluded agreements on deferred prosecution by the Supreme Public Prosecutor, so that they are available to citizens;
2. Organize additional practical training for prosecutors and defense attorneys on the use of plea bargaining and deferred prosecution;

3. Encourage the application of these alternative models to reach a more efficient realization of justice, reduce the backlog of cases and costs;
4. Strengthen the efforts of the prosecution towards continuous and proper communication with the interested public about its role in the justice system with regular activities and work results;
5. Improve the capacities of the court system in making regular analysis of the costs of court proceedings, and the impact of these alternative models on the efficiency and financial sustainability of the court system.